

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

1. **Sections Affected:** R4-30-221
Rulemaking Action: Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-106(B)
Implementing statute: A.R.S. § 32-106(B)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: LaVern Douglas
Address: Board of Technical Registration
1951 West Camelback Road, Suite 250
Phoenix, Arizona 85015-3470
Telephone: (602) 255-4053
Fax: (602) 255-4051
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule lists the engineering branches recognized by the Board for purposes of review of experience, selection of examination to be administered, definition of areas of examination to be administered, and definition of areas of demonstrated proficiency to be inscribed on the seal.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
There is no anticipated impact from this change.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: LaVern Douglas
Address: Board of Technical Registration
1951 West Camelback Road, Suite 250
Phoenix, Arizona 85015-3470
Telephone: (602) 255-4053
Fax: (602) 255-4051
8. **The time, place, and nature of the proceedings for the adoption of the rule:**
None scheduled. Interested parties may request an oral proceeding by contacting LaVern Douglas at (602) 255-4053, Monday through Friday from 8 a.m. to 4 p.m.

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9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rule:
None.
11. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-221. Engineering Branches Recognized

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-221. Engineering Branches Recognized

- A. The Board shall recognize the branches of engineering described below for purposes of review of experience, selection of examination to be administered and definition of areas of examination to be administered and definition of areas of demonstrated proficiency to be inscribed on the seal. The categories shall not be construed to limit the areas of a registrant's practice of engineering. (See R4-30-301(A)(10),(11), and (12))
1. Aeronautical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for aircraft, space vehicles, aerodynamics,

dynamics and control, propulsion and other related systems.

- 2.1. No change
3.2. No change
4.3. No change
5.4. No change
6.5. No change
7.6. No change
8.7. No change
9.8. No change
10.9. No change
11.10. No change
12.11. No change
13.12. No change
14.13. No change
15.14. No change
16.15. No change
17.16. No change

B. No change.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| Article 8 | New Article |
| R19-3-801 | New Section |
| R19-3-802 | New Section |
| R19-3-803 | New Section |
| R19-3-804 | New Section |
| R19-3-805 | New Section |
2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 5-504(B)
Implementing statute: A.R.S. § 5-504(B)
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Mr. Jody Spicola, Executive Director
Address: Arizona State Lottery Commission
4740 East University
Phoenix, Arizona 85034
Telephone: (602) 921-4514
Fax: (602) 921-4488
4. An explanation of the rule, including the agency's reason for initiating the rule:
R19-3-801 through R19-3-805 prescribes the procedures for disciplinary actions, dismissal, and due process protection for sales employees as prescribed by amendment to A.R.S. § 5-504 by the 43rd Legislature and signed into law by the Governor on April 28, 1997, concerning Arizona Lottery sales personnel dismissal and related hearings.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.

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6. The preliminary summary of the economic, small business, and consumer impact:

- A. *The Arizona State Lottery.*
There are no identifiable costs to the Agency for this Article.
- B. *Political Subdivisions.*
Political subdivisions of this state are not directly affected by the Retailer rule.
- C. *Businesses Directly Affected by the Rulemaking.*
Businesses are not affected by this rule.
- D. *Private and Public Employment.*
Private and public employees are not directly affected by this rule, except those sales personnel employed by the Arizona Lottery. The Sales Personnel rule will provide the procedures for disciplinary actions, dismissal, and due process protection for sales employees as prescribed in A.R.S. § 5-504.
- E. *Consumers and the Public.*
There are no costs to the public associated with the implementation of this rule.
- F. *State Revenues.*
This rulemaking will not have an impact on state revenues.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mr. Jody Spicola, Executive Director
Address: Arizona State Lottery Commission
4740 East University
Phoenix, Arizona 85034
Telephone: (602) 921-4514
Fax: (602) 921-4488

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: August 15, 1997
Time: 10 a.m.
Location: Arizona State Lottery
4740 East University
Phoenix, Arizona 85034
Nature: Oral Proceeding (Close of the record is 5 p.m., M.S.T., Thursday, August 14, 1997, for written comments and at the end of the oral proceeding for verbal comments.)

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporation by reference and their location in the rules:

Not applicable.

11. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 8. SALES PERSONNEL

Section

- R19-3-801. Definitions
- R19-3-802. Application
- R19-3-803. Dismissal Procedure for Sales Employees
- R19-3-804. Hearing Procedure
- R19-3-805. Rehearing

ARTICLE 8. SALES PERSONNEL

R19-3-801. Definitions

In this Article, unless the context otherwise requires:

- 1. "Appellant" means any Sales Employee who has filed an appeal from a dismissal by the Arizona Lottery.

- 2. "Sales Employee" means any employee of the Arizona Lottery who is involved in sales activities that require the employee to handle property that produces revenue for the lottery.
- 3. "Personnel Review Committee" means a 3-member committee which shall review an appeal by a Sales Employee of his or her dismissal and render a decision on such appeal.
- 4. "Personnel Review Panel" means a panel of 5 members appointed by the Executive Director of the Arizona Lottery not later than the 1st of January of each year from which the Personnel Review Committee is selected.

R19-3-802. Application

This Article shall apply to all Sales Employees hired or transferred

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into any vacant position on or after July 21, 1997, and to all Sales Employees employed before July 21, 1997, who have waived their rights under the State Merit System.

R19-3-803. Dismissal Procedure for Sales Employees

The Arizona Lottery may dismiss any Sales Employee pursuant to this Section, provided that, on or before the effective date of any dismissal of a Sales Employee, the employee to be dismissed shall be provided with a written statement setting forth the basis for the dismissal in sufficient detail so as to inform him or her of the specific reason or reasons for such action. In the event of an appeal by any Sales Employee of a dismissal, the Arizona Lottery shall provide a copy of the statement setting forth the basis for such dismissal and a copy of the written appeal by the Appellant to the Personnel Review Committee appointed to review such dismissal.

R19-3-804. Hearing Procedure

- A. Sales Employees dismissed pursuant to this Article may appeal such dismissal by filing a written appeal with the Executive Director of the Arizona Lottery no later than 10 days after his or her notice of dismissal. The appeal shall state, in sufficient detail, specific responses to the cause or causes upon which the dismissal was based.
- B. The Arizona Lottery may file a written response to the appeal, which shall be filed within 10 days from the receipt of the appeal. A copy of the response shall be sent to the Appellant.
- C. Not later than the 15th of January of each year, the Executive Director of the Arizona Lottery shall appoint a Personnel Review Panel consisting of 5 members. At least 2 members of the Panel shall have public sector personnel management experience and at least 1 member shall be a member in good standing with the State Bar of Arizona experienced in employment law. In the event of an appeal by a Sales Employee of his or her dismissal, the Arizona Lottery and the Appellant shall each be entitled to strike 1 member of the Personnel Review Panel. The 3 remaining members of the panel not stricken by either the Arizona Lottery or the Appellant shall serve as the Personnel Review Committee for such appeal and shall render a decision as provided in this rule.
- D. The Personnel Review Committee shall conduct a hearing on the appeal within 30 days after the appeal is filed unless the time is extended by mutual consent of the Appellant and the Arizona Lottery. The hearing shall be informally conducted with technical rules of evidence not applying to the proceeding. Both parties may present witnesses and may cross-examine any witnesses called by the other party. The Committee, in its discretion, may call additional witnesses. Both parties shall be given 10 days' advance notice of the hearing. Not less than 5 days prior to the hearing, each party shall provide the Committee and the opposing party with a list of all witnesses to be presented. All testimony given before the Committee shall be recorded and transcribed by a court reporter and entered as a part of the official record.
- E. Either the Appellant or the Arizona Lottery, at his own expense, may take the deposition of any witness who does not reside within the county or within 100 miles of the place where the hearing is to be held, is out of the state, or is too infirm to attend the hearing.
- E. The Personnel Review Committee shall render its decision within 20 days after the conclusion of the hearing and shall, at the same time, send a copy of its decision to the Arizona

Lottery and the Appellant. The Committee shall prepare an official record of the hearing, including all testimony, all exhibits, and all other relevant documents.

- G. The Personnel Review Committee may, with the consent of both parties, waive the hearing and render its decision based solely upon the written evidence.

R19-3-805. Rehearing

- A. Either party to an appeal by a Sales Employee from his or her dismissal who is aggrieved by a decision rendered in such appeal may file with the Personnel Review Committee, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
- B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Personnel Review Committee. A response may be filed within 10 days after service of such motion or amended motion by any other party. The Personnel Review Committee may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing of the decision may be granted on any of the following grounds materially affecting the moving party's rights:
 - 1. Irregularity in the proceedings before the Personnel Review Committee or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - 2. Misconduct of the Personnel Review Committee or the prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 - 7. A decision not justified by the evidence or contrary to law.
- D. The Personnel Review Committee may affirm or modify the decision or grant a rehearing as to all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. The Personnel Review Committee, within the time for filing a motion for rehearing under this rule, may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Personnel Review Committee may grant a motion for rehearing, timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.
- E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. The opposing party may, within 10 days after such service, serve opposing affidavits.
- G. Any person aggrieved by a decision of the Personnel Review Committee has the right of appeal as provided in A.R.S. § 12-901 et seq. subject to the requirements of A.R.S. § 41-1062(B).